

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

CHRISTOPHER SMITH,

Defendants.

8:20-CR-78

ORDER

This matter is before the Court to conduct an initial review of defendant Christopher Smith's *pro se* Motion to Vacate under 28 U.S.C. § 2255. [Filing 238](#). In his Motion, Smith raises three grounds for habeas relief, all related to ineffective assistance of counsel: (1) his attorney failed to file a direct appeal as Smith requested; (2) his attorney did not properly advise him about pleading guilty and his plea agreement; and (3) his attorney did not provide or let him view discovery. [Filing 238 at 2–7](#).

The judge receiving a [§ 2255](#) motion to vacate must first determine if “it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief.” *See* Rule 4(b) of the Rules Governing Section 2255 Proceedings. “Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief,” the Court must order the United States to respond and consider holding a hearing. [28 U.S.C. § 2255\(b\)](#); *see also* Rule 4(b) of the Rules Governing Section 2255 Proceedings.

Having conducted an initial review, for at least one of Smith's grounds,¹ the Court cannot conclude that it “plainly appears” that Smith is not entitled to relief. Therefore, the Court orders

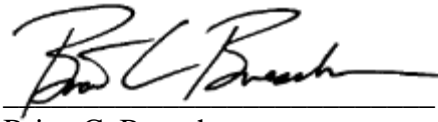
¹ The Court notes that at Smith's change-of-plea hearing, the magistrate judge questioned Smith about his counsel's performance, how they reviewed the petition and plea agreement, and if they discussed possible defenses. [Filing 153 at 17–22, 25](#). Smith stated that he had no questions or issues and that he was satisfied with his counsel. [Filing 153 at 17–22, 25](#).

the United States to respond to the grounds presented in Smith's Motion within fourteen (14) days of the date of this order. The Court defers determining whether to hold a hearing until it has reviewed the United States' response. Accordingly,

IT IS ORDERED that the United States shall respond to Christopher Smith's Motion to Vacate, [Filing 238](#), within fourteen (14) days of the date of this order.

Dated this 9th day of May, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. C. Buescher", is written over a horizontal line.

Brian C. Buescher
United States District Judge